A

Chia Tsai Looi v Pandian a/l Munusamy & Anor

B HIGH COURT (SHAH ALAM) — WRIT SUMMONS NO BA-22NCVC-313–07 OF 2019
FAIZAH JAMALUDIN J
10 MAY 2021

C *Land Law — Sale and purchase agreement — Sale and purchase of land — Plaintiff entered into sales and purchase agreement of farmland with first defendant — First defendant entered into sales and purchase agreement of farmland and paddy land with second defendant — Whether second defendant was bona fide purchaser for value — Whether farmland and paddy land was* D *validly transferred by first defendant to second defendant*

This was a claim by the plaintiff against the first defendant ('D1') and the second defendant ('D2') for declarative reliefs and specific performance, or alternatively, the return of the deposit paid by the plaintiff to D1 in respect of E a farmland ('tanah kebun') together with damages and costs, under a sales and purchase agreement ('the first tanah kebun SPA'). At the time the plaintiff and D1 executed the first tanah kebun SPA, D1 was holding the tanah kebun as the administrator of the estate of Parvathi a/p Marutha ('the deceased'). The assets of the estate comprised of the tanah kebun and a paddy land ('tanah sawah'). F D1 had filed a petition for the distribution of the estate and was appointed as administrator of the estate of the deceased pursuant to a grant of letter of administration (Form F) under s 13 of the Small Estates (Distribution) Act 1955 ('SEDA 1955'). However, in July 2014, a Borang T issued under reg 12(3) of the Small Estates (Distribution) Regulations 1955 ('SEDA G Regulations'), which was an order upon subsequent application together with a revised Borang F, pursuant to a petition by Ramesh a/l Ekambaran. Therefore, the administrator of the estate of the deceased was Ramesh a/l Ekambaran. From the endorsements to the issue document of title of the tanah kebun, that further Borang Fs were issued, whereby later in 2014, D1 was H reappointed as administrator of the tanah kebun; and in 2015 both D1 and Ramesh a/l Ekambaran were appointed as joint administrators of the deceased's estate. It was the plaintiff's case that D1 and D2 had fraudulently entered into a second SPA between them ('the second SPA') for the purchase of the tanah kebun and the tanah sawah with the intention of defrauding the plaintiff of her I beneficial interest in the tanah kebun. The issues for consideration were: (a) whether D2 was a bona fide purchaser for value; and (b) whether the tanah kebun and tanah sawah was validly transferred by D1 to D2.

Held:

(1) D2 had failed to prove on a balance of probabilities that he lacked notice of the plaintiff's beneficial interest in the tanah kebun. He knew that the plaintiff had purchased the tanah kebun pursuant to the first tanah kebun SPA. Furthermore, D2 had failed to proof that he had paid valuable consideration for the tanah kebun and the tanah sawah under the second SPA prior to the registration of the lands in his name. D2 was not a purchaser for value at the time the title in the tanah kebun was transferred to him and registered in his name. By his own admission, he had not paid the full purchase price for the lands at the time title to the tanah kebun and tanah sawah were registered in his name. Furthermore, there was no proof that D2 had paid D1 the RM96,000 deposit on the signing of the second SPA. For these reasons, D2 had failed to discharge his burden of proof that he was indeed a bona fide purchaser for value of the tanah kebun and the tanah sawah (see paras 100, 103, 109–111 & 113).

(2) The land search results of the tanah kebun showed that both D1 and Ramesh a/l Ekambaran were the joint administrators of the land. Pursuant to s 383(2) of the National Land Code, the court must accept what was endorsed on the land search results as prima facie evidence as to who were the owners of the land as administrators during the transfer sale and transfer of the land. Neither D2 nor his lawyer, DW2, provided any evidence to disprove the prima facie evidence. The land administrator's distribution order or an order for sale by private treaty, though statutorily required under SEDA 1955 and the SEDA Regulations in order for a small estate to be sold by its administrator, were not made conditions in the second SPA. Therefore, since the administrator of the deceased's estate, be it D1 or Ramesh or D1 and Ramesh as joint administrators, failed to obtain a distribution order or order for sale by private treaty from the land administrator prior to the sale and transfer of the tanah kebun to D2 pursuant to the second SPA, the sale and transfer of the tanah kebun and tanah sawah from D1 to D2 was invalid and void ab initio (see paras 121–123, 126 & 128).

[Bahasa Malaysia summary

Ini adalah tuntutan oleh plaintif terhadap defendan pertama ('D1') dan defendan kedua ('D2') untuk relif deklarasi dan pelaksanaan spesifik, atau sebagai alternatif, pemulangan deposit yang dibayar oleh plaintif kepada D1 berkenaan dengan tanah ladang ('tanah kebun') berserta ganti rugi dan kos, di bawah perjanjian jual beli ('SPA tanah kebun pertama'). Pada masa plaintif dan D1 melaksanakan SPA tanah kebun pertama, D1 memegang tanah kebun sebagai pentadbir harta pusaka Parvathi a/p Marutha ('simati'). Aset harta pusaka terdiri daripada tanah kebun dan tanah padi ('tanah sawah'). D1 telah memfailkan petisyen untuk pembahagian harta pusaka dan dilantik sebagai pentadbir harta pusaka simati menurut geran surat kuasa mentadbir (Borang

F) di bawah s 13 Akta Harta Pusaka Kecil (Pembahagian) 1955 ('SEDA 1955'). Walau bagaimanapun, pada Julai 2014, Borang T dikeluarkan di bawah peraturan 12(3) Peraturan Harta Pusaka Kecil (Pembahagian) 1955 ('Peraturan SEDA'), yang merupakan perintah atas permohonan berikutnya bersama-sama dengan Borang F yang dipinda, menurut petisyen oleh Ramesh a/l Ekambaran. Oleh itu, pentadbir harta pusaka simati ialah Ramesh a/l Ekambaran. Daripada pengesahan kepada dokumen hakmilik tanah kebun, Borang F selanjutnya telah dikeluarkan, yang kemudiannya pada tahun 2014, D1 dilantik semula sebagai pentadbir tanah kebun; dan pada tahun 2015 kedua-dua D1 dan Ramesh a/l Ekambaran telah dilantik sebagai pentadbir bersama harta pusaka simati. Adalah kes plaintif bahawa D1 dan D2 telah secara fraud memasuki SPA kedua antara mereka ('SPA kedua') untuk pembelian tanah kebun dan tanah sawah dengan niat untuk menipu plaintif mengenai kepentingan benefisialnya dalam tanah kebun. Isu-isu untuk pertimbangan adalah: (a) sama ada D2 adalah pembeli pembeli bona fide bagi nilai; dan (b) sama ada tanah kebun dan tanah sawah telah dipindahmilik secara sah oleh D1 kepada D2.

Diputuskan:

(1) D2 telah gagal untuk membuktikan pada imbangan kebarangkalian bahawa dia tidak mempunyai notis tentang kepentingan benefisial plaintif dalam tanah kebun. Dia tahu bahawa plaintif telah membeli tanah kebun menurut SPA tanah kebun pertama. Tambahan pula, D2 telah gagal membuktikan bahawa beliau telah membayar balasan bernilai untuk tanah kebun dan tanah sawah di bawah SPA kedua sebelum pendaftaran tanah atas namanya. D2 bukan pembeli untuk nilai pada masa hakmilik tanah kebun dipindahkan kepadanya dan didaftarkan atas namanya. Dengan pengakuannya sendiri, dia tidak membayar harga pembelian penuh untuk tanah-tanah itu pada masa hakmilik tanah kebun dan tanah sawah didaftarkan atas namanya. Tambahan pula, tiada bukti bahawa D2 telah membayar D1 deposit RM96,000 ketika menandatangani SPA kedua. Atas sebab-sebab ini, D2 telah gagal untuk melepaskan beban bukti bahawa dia sememangnya pembeli bona fide bagi nilai tanah kebun dan tanah sawah (lihat perenggan 100, 103, 109–111 & 113).

(2) Hasil carian tanah kebun menunjukkan bahawa kedua-dua D1 dan Ramesh a/l Ekambaran adalah pentadbir bersama tanah tersebut. Menurut s 383(2) Kanun Tanah Negara, mahkamah mesti menerima apa yang telah diendorskan dalam hasil carian tanah sebagai bukti prima facie tentang siapa pemilik tanah sebagai pentadbir semasa penjualan pindah milik dan pemindahan tanah. Baik D2 mahupun peguamnya, DW2, tidak memberikan sebarang keterangan untuk menafikan keterangan prima facie. Perintah pembahagian pentadbir tanah atau perintah untuk dijual melalui perjanjian persendirian, walaupun mengikut

undang-undang dikehendaki di bawah SEDA 1955 dan Peraturan-Peraturan SEDA agar harta pusaka kecil dijual oleh pentadbirnya, tidak dijadikan syarat dalam SPA kedua. Oleh itu, oleh kerana pentadbir harta pusaka simati, sama ada D1 atau Ramesh atau D1 dan Ramesh sebagai pentadbir bersama, gagal mendapatkan perintah pembahagian atau perintah penjualan melalui perjanjian persendirian daripada pentadbir tanah sebelum penjualan dan pemindahan tanah kebun kepada D2 menurut SPA kedua, penjualan dan pemindahan tanah kebun dan tanah sawah daripada D1 ke D2 adalah tidak sah dan batal ab initio (lihat perenggan 121–123, 126 & 128).]

Cases referred to

Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors [1998] 1 MLJ 465; [1998] 1 CLJ 793, FC (distd)

Legislation referred to

Evidence Act 1950 s 74
National Land Code ss 340, 340(2), (2)(a), 383(2), 384, Form 14A
Probate and Administration Act 1959 s 60
Small Estates (Distribution) Act 1955 ss 3(2), 4, 5, 13, 15(1), 17
Small Estates (Distribution) Regulations 1955 regs 12(3), 16, 16A, Forms F, T

S Vengadeswaran (S Vengadeswaran) for the plaintiff.
Daljeet Singh (TF Wong & Tee) for the second defendant.

Faizah Jamaludin J:

INTRODUCTION

[1] This is a claim by the plaintiff against the first defendant ('D1') and the second defendant ('D2') for declarative reliefs and specific performance, or alternatively, the return of the deposit paid by the plaintiff to D1 in respect of a piece of land held under HSM 12124, Lot 17108, Mukim Tanjung Karang, Daerah Kuala Selangor ('tanah kebun') together with damages and costs, under a sales and purchase agreement dated 26 September 2014 ('first tanah kebun SPA').

[2] It is the plaintiff's case that D1 and D2 had fraudulently entered into a second SPA on 12 June 2015 between them ('second SPA') for the purchase of the *tanah kebun* and a *tanah sawah* (as defined below) with the intention of defrauding the plaintiff of her beneficial interest in the *tanah kebun*.

[3] The plaintiff seeks the following reliefs from D1 and D2:

A (a) a declaration to set aside the registration of D2 as the registered owner of the *tanah kebun*;

(b) specific performance of first *tanah kebun* SPA between the plaintiff and D1 against D1;

B (c) alternatively, an order that the defendants pay the plaintiff the deposit in the sum of RM50,000 and general damages to be assessed by the court;

(d) the defendants pay interest at the rate 5%pa on the sum of RM50,000 and the general damages from the date of the filing of the writ until the C date of full settlement; and

(e) costs on a solicitor client basis.

[4] In this suit, the main issues before this court are: (i) whether the *tanah kebun* was transferred by D1 to D2 in accordance with law — in particular the D Small Estates (Distribution) Act 1955 ('the SEDA 1955'); (ii) whether D2 was a bona fide purchaser for value of the *tanah kebun*; and (iii) if yes, whether D2's title to the *tanah kebun* indefeasible or does it fall within any of the statutory exceptions provided under s 340 of the National Land Code ('the NLC').

E

[5] As Professor Teo Keang Sood stated in his article entitled *Indefeasibility of Title/Interest Pre-and Post-Tan Ying Hong*, Journal of the Malaysian Judiciary, July 2018 at p 193:

F > The concept of indefeasibility of title and interest provided in s 340 of the National Land Code (NLC) in the cornerstone of the Malaysian Torrens system. This concept is central to land registration and dealings under the NLC. It provides the registered title or interest of a registered proprietor immunity from attack by adverse claims. However, this quality of indefeasibility is subject to the various statutory exceptions under s 340 of the NLC ...

G

[6] Section 340 of the NLC reads as follows:

> 340 Registration to confer indefeasible title or interest, except in certain circumstances
>
> H (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
>
> I (2) The title or interest of any such person or body shall not be indefeasible —
>
> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
>
> (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2) —

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

[7] D1 has absconded. The writ and statement of claim was served on D1 by way of substituted service but D1 failed to enter an appearance. A certificate of non-appearance was issued against him on 26 November 2019. Learned counsel for the plaintiff submits that because the plaintiff's claim against D1 is not only a liquidated damage but includes specific performance and declarative relief and the claim is intertwined with her claim against D2, a judgment in default of appearance against D1 is premature — she will wait for the outcome of the trial against D2 and seek the appropriate orders against D1.

[8] At the trial of this action, three witnesses were called for the plaintiff, namely, the plaintiff herself ('PW1'); Puan Zurina bt Zainuri ('PW2') — the lawyer who prepared first *tanah kebun* SPA between the plaintiff and D1 for sales and purchase of the *tanah kebun*; and the plaintiff's husband, Chia Kim Bing ('PW3'). D2 called two witnesses, namely himself ('DW1') and Encik Karam Singh a/l Indar Singar ('DW2') — the lawyer who had prepared the second SPA between D2 and D1 for the same *tanah kebun* and who had applied for the lifting of the plaintiff's private caveat on the *tanah kebun* without the plaintiff's, PW3's and PW2's knowledge. PW2 and DW2 were both subpoena witnesses.

[9] At the conclusion of the trial, this court found that D2 was not a bona fide purchaser for value. Even if D2 was a bona fide purchaser for value, this court found that the D2's title and interest in the *tanah kebun* is not indefeasible: it falls within the statutory exceptions under s 340(2) of the National Land Code for the following reasons:

(a) D2 was a party or privy to a misrepresentation on the plaintiff and/or her husband (PW3), who was the plaintiff's representative, in respect of her purchase of the *tanah kebun* from D1; and

(b) the registration of D2's title and interest of the *tanah kebun* was obtained through an insufficient or void instrument because:

(i) the sale of the land was not made pursuant to distribution order or an order for sale by the land administrator as is required under the SEDA 1955; and

(ii) the sale was made through a memorandum of transfer (Borang 14A) dated 22 April 2016 between D2 and D1. However, at the date of the memorandum of transfer and the date of the registration of the memorandum of transfer, D1 was not the administrator of the *tanah kebun*. The endorsement on the issue document of title of the *tanah kebun* shows that on the date of the memorandum of transfer and date of the registration of the instrument of transfer, the *tanah kebun* was jointly owned by D1 and one Ramesh a/l Ekambaran as administrators. Additionally, although the instrument of transfer was between D1 as transferor and D2 as transferee, the endorsement on the title shows that the transfer of the title in the *tanah kebun* was from Ramesh a/l Ekambaran to D2.

[10] Therefore, as against D2, this court made a declaration that D2's registration as the owner of the *tanah kebun* be set aside.

[11] The full reasons for this court's decision are set out in this judgment.

BACKGROUND FACTS

[12] In September 2014, the plaintiff's husband (PW3) had purchased the *tanah kebun* for her from D1. For this purpose, the plaintiff and D1 entered into the first *tanah kebun* SPA on 26 September 2014.

[13] At the time the plaintiff and D1 executed the first *tanah kebun* SPA, D1 was holding the *tanah kebun* as the administrator of the estate of Parvathi a/p Marutha (deceased). D1 had filed a petition for the distribution of the estate and was appointed as administrator of the estate of Parvathi a/p Marutha (deceased) pursuant to a grant of letter of administration (Borang F) under s 13 of the SEDA 1955 dated 23 June 2011 ('the 2011 grant of LA').

[14] And at the time of D1's appointment as administrator of deceased's estate under the 2011 grant of LA, the assets of the estate comprised of a farmland (*tanah kebun*) and paddy land (*tanah sawah*), which is colloquially referred to as 'tanah ganding' ie, both lands were held under one issue document of title. In this case, the farmland and the *sawah* land were held

under HSM 1404 Lot 17108 and 107104 Mukim Tanjung Karang, Kuala Selangor. A

[15] D1's appointment as administrator under the 2011 grant of LA was limited under s 13 of the SEDA 1955 to the collection and preservation of the property of the deceased and to giving discharge for debts due to her estate subject to the directions of the land administrator. The endorsement on the 2011 grant of LA reads as follows: B

HARTA TAK ALIH:

HSM 1404 LOT 17108 & 107104 MUKIM TANJUNG KARANG, KUALA SELANGOR (1/1 bhg) C

CATATAN:

Kuasa mentadbir diberi kepada Pandian a/l Munusamy

Pentadbir bertanggungjawab untuk D

(i) Memohon tukar/syarat cantum

(ii) Memohon ulang bicara sekirannya permohonan tukar/batal syarat diluluskan.

E

[16] On 30 May 2012, individual issue of documents of title were issued for the farmland (*tanah kebun*) under HSM 12124, Lot 17108 and for the paddy land (*tanah sawah*) under HSM 12125 Lot 22642 ('tanah sawah'). It is stated on each of the new issue documents of title that the said lands were held previously held under HSM 1404 Mukim Tanjung Karang: 'No Hakmilik yang terakhir sekali Mukim Tanjung Karang HSM 1404'. F

[17] The *tanah kebun* and *tanah sawah* were the only asset in the estate of Parvathi a/p Marutha (deceased). At the time D1 filed the petition for distribution of the estate, both lands were held under one issue document of title HSM 1404 Lot 17108 and 107104 Mukim Tanjung Karang, Kuala Selangor. The estate was valued at RM124,000. As the value of the estate was less than RM2m, the distribution of the estate comes within the SEDA 1955. Section 3(2) of the SEDA 1955 states as follows: G H

3(2) For the purposes of this Act a small estate means an estate of a deceased person consisting wholly or partly of immovable property situated in any State and not exceeding two million ringgit in total value.

[18] The land administrator has exclusive jurisdiction to deal with the distribution and administration of the whole of the small estate pursuant to s 4 of the SEDA 1955, which reads as follows: I

4 Jurisdiction in respect of small estates

A (1) Save as in this Act otherwise provided no interest in any small estate shall devolve on or vest in any person, by virtue of any instrument other than an order or grant made under this Act.

(2) The Land Administrator of the district where a petition has been lodged or in the case of more than one petition has been lodged, the Land
B Administrator of the district where the first petition has been lodged, shall have exclusive jurisdiction to deal with the distribution and administration of the whole estate wherever situated.

C **[19]** Where the deceased has left a valid will or other valid testamentary disposition in respect of the small estate or part thereof, pursuant to s 5 of the SEDA 1955, nothing in the Act, including the land administrator's jurisdiction over the small estate, shall effect the exclusive jurisdiction of the High Court to grant probate or letters of administration s 5 of the SEDA 1955 states that the grant of probate or letters of administration 'when made shall have effect in all
D respects as if the estate had not been a small estate'.

[20] In this case, there is no evidence that the deceased, Parvathi a/p Marutha, had left a valid will or other valid testamentary disposition in respect of the small estate or part thereof. Accordingly, with respect to the *tanah kebun*,
E which forms part of the deceased's small estate, the land administrator has the exclusive jurisdiction to deal with the distribution and administration of the estate.

F **[21]** Based on the *catatan* on the 2011 grant of LA, D1 should have asked for a rehearing of the petition of the distribution of the estate once the 'syarat cantum' on HSM 1404 Lot 17108 and 107104 was changed and individual titles were issued for the *tanah kebun* and the *tanah sawah* were issued. There is no evidence before this court that D1 had asked for a rehearing of the petition
G after the individual titles were issued.

[22] The facts show that at the time D1 entered into the first *tanah kebun* SPA with the plaintiff on 26 September 2014, D1 was holding the *tanah kebun* as administrator of the estate of Parvathi a/p Marutha (deceased) pursuant to
H the 2011 grant of LA.

[23] However, on 21 July 2014, a Borang T issued under sub-reg 12(3) of the Small Estates (Distribution) Regulations 1955 ('the SEDA Regulations'), which is an order upon subsequent application together with a revised
I Borang F, pursuant to a petition by Ramesh a/l Ekambaran ('the 2014 grant of LA'). Section 17 of the SEDA 1955 states that the party may make a subsequent application to the land administrator. The *catatan* on the 2014 grant of LA states:

HARTA TAK ALIH:

HSM 12124 LOT 17108 MUKIM TANJUNG KARANG, KUALA SELANGOR (1/1 bhg)

HSM 12125 LOT 22642 MUKIM TANJUNG KARANG, KUALA SELANGOR (1/1 bhg)

CATATAN:

DIBATALKAN RAMESH A/L EKAMBARAN SEBAGAI PENTADBIR

[24] Therefore, pursuant to the 2014 grant of LA, the administrator of the estate of the deceased is Ramesh a/l Ekambaran.

[25] It appears from the endorsements to the issue document of title of the *tanah kebun*, that further Borang Fs were issued, whereby later in 2014, D1 was reappointed as administrator of the *tanah kebun*; and in 2015 both D1 and Ramesh a/l Ekambaran were appointed as joint administrators of the deceased's estate.

[26] The land administrator is empowered under s 15 of the SEDA 1955 to distribute the small estate. Section 15 of the SEDA 1955 reads as follows:

> 15 Powers of the Land Administrator in distributing the estate
>
> (1) Where the Land Administrator is satisfied that all the beneficiaries of the estate being of full age and capacity have agreed between themselves as to the manner in which the estate should be distributed, the Land Administrator may, after recording in the distribution order the terms of the agreement, and the assent of the parties thereto, distribute the estate in the manner provided for by the agreement unless it shall appear to the Land Administrator to be unjust or inequitable so to do.

[27] PW2 said that the initial plan was for D1 to get a *perintah pembahagian harta pusaka* from the land administrator and that she had met with D1's siblings and they all agreed for the land to be sold. However, D1 was unable to get the *perintah pembahagian harta pusaka* because of problems with his cousins.

[28] As can be seen from the 2014 grant of LA, D1's appointment as administrator of the deceased's estate was cancelled, and Ramesh a/l Ekambaran was appointed as the administrator of the estate.

[29] Pursuant to and upon the application by the administrator of the small estate under s 17 of the SEDA 1955, the land administrator may order the land to be sold by auction or by private treaty.

[30] During cross-examination of PW2, learned counsel for D2 had put to her that to sell the *tanah kebun*, D1 must obtain an order for sale from the High Court under s 60 of the Probate and Administration Act 1959. PW2 disagreed.

A She said that he must get a *perintah pembahagian* to sell the *tanah kebun*, which is why had included is as one of the conditions under the first *tanah kebun* SPA.

[31] With respect to learned counsel for D2, I have to agree with PW2. The value of the deceased's estate is below RM2m. Hence, it falls within the definition of 'small estate' under the SEDA 1955. Therefore, the land administrator has exclusive jurisdiction in respect of the estate pursuant to s 4 of the SEDA 1955. As there is no evidence that the deceased had a valid will or other valid testamentary disposition in respect of the small estate or part thereto, the exception in s 5 of the SEDA 1955 as regards the High Court's jurisdiction to grant probate of testamentary dispositions relating to small estate does not apply in this instant case.

[32] Therefore, the *tanah kebun* and the *tanah sawah* may be sold pursuant to a distribution order made by the land administrator under s 15(1) of the SEDA 1955, if he is satisfied 'that all the beneficiaries of the estate being of full age and capacity have agreed between themselves as to the manner in which the estate should be distributed'.

[33] However, in this case, as PW2 informed the court, D1 was unable to obtain the *perintah pembahagian* because the beneficiaries were unable to reach a consensus on the manner the estate was to be distributed.

[34] Without the distribution order (*perintah pembahagian*) under s 15(1) of the SEDA 1955, the administrator of the estate would have had to apply to the land administrator under reg 16 of the SEDA Regulations for an order for the *tanah kebun* to be sold by auction or under reg 16A for an order for the *tanah kebun* to be sold by private treaty.

G THE PLAINTIFF'S CASE

[35] The plaintiff's case is that sometime in mid 2014, D2 had informed her husband, PW3, that the *tanah kebun* was available for sale. This is corroborated by PW3's testimony during the trial.

[36] PW3 proceeded to purchase the *tanah kebun* for the plaintiff. PW3 said that D2 told him that the *tanah kebun* was registered in the name of D1 as administrator and that D1 had the authority to sell the *tanah kebun*.

[37] PW3 said that D2 showed him the issue document of title for the *tanah kebun* dated 30 May 2012. The issue document of title shows that D1 is the registered owner of the whole *tanah kebun* as administrator and that any transfer of the said land requires the prior approval of the state authority.

[38] PW3 said that he never met D1 — all the discussions and negotiations for the purchase of the tanah kebun was done with D2. PW3 said that D2 told him that the purchase price for the *tanah kebun* is RM100,000 and that PW3 should pay the sum of RM50,000 to D1 as deposit for the *tanah kebun*.

[39] PW3 said that after he agreed with the purchase price of RM100,000 for the *tanah kebun*, D2 brought him and the plaintiff to PW2's law firm, Tetuan Zurina, Anum & Co. When asked by the plaintiff's counsel whether he believed what D2 told him, PW3 said that yes, he does believe D2 because D2 is from his *kampung*, Sekinchan and D2 is an educated person who has done a lot of sales and purchase of land in the Sekinchan, Tanjung Karang and Kuala Selangor.

[40] When asked why he did not put his name and sign first *tanah kebun* SPA, PW3 replied that as he wanted to give the *tanah kebun* as a gift for his wife, the plaintiff, he was advised to put the plaintiff's name as the purchaser on the SPA.

[41] The plaintiff then entered into the first *tanah kebun* SPA on 26 September 2014, whereby she agreed to purchase the *tanah kebun* for the sum of RM100,000.

[42] On the same day, D2 entered into a separate sales and purchase agreement with D1 ('first *tanah sawah* SPA') for the purchase of the *tanah sawah* held under HSM 12125, Lot 22642, Mukim Tanjung Karang Daerah Kuala Selangor, Selangor. Both the first *tanah kebun* SPA and first *tanah sawah* SPA were prepared by PW2.

[43] The first *tanah kebun* SPA was subject to two conditions, namely, that D1 obtain: (i) a distribution order (*perintah pembahagian harta pusaka*) from the land administrator; and (ii) the consent of the state authority within three months (with a one month extension) from the date of the distribution order to transfer the *tanah kebun* to the plaintiff. If D1 fails to obtain the distribution order, the first *tanah kebun* SPA will terminate and D1 shall return the deposit paid by the plaintiff, unless D1 consents to the extension of the agreement. The conditions in the first *tanah kebun* SPA reads as follows:

> MUKADIMAH
>
> (B) DAN BAHAWASANYA Perjanjian ini tertakluk kepada Pengeluaran Geran Hakmilik yang diendors atas nama Penjual melalui Perintah Pembahagian Harta Pusaka yang dikeluarkan oleh Pejabat Tanah Kuala Selangor. Sekiranya Perintah Pembahagian Harta Pusaka gagal diperolehi maka perjanjian ini akan terbatal dan segala deposit yang telah dibayar kepada Penjual hendaklah dikembalikan kepada Pembeli.

(C) DAN BAHAWASANYA Harta berkenaan mempunyai sekatan kepentingan di mana ianya tidak boleh dipindahmilik, dipajak atau digadai denga apa cara sekalipun melainkan dengan kebenaran Pihak Berkuasa Negeri.

...

PERMOHONAN UNTUK MENDAPATKAN KEBENARAN MEMINDAHMILIK

2 (i) Sebaik sahaja Pengeluaran Geran Hakmilik yang diendors atas nama Penjual melalui Perintah Pembahagian Harta Pusaka oleh Pejabat Tanah Kuala Selangor, Penjual hendaklah dengan segera memohon kepada Pihak Berkuasa Negeri untuk mendapatkan kebenaran memindahmilik Harta Berkenaan ke atas nama Pembeli. Segala perbelajaan dengan kos mengenai permohonan ini akan ditanggung oleh Penjual.

(ii) Sekiranya Penjual gagal mendapatkan kebenaran memindahmilik Harta Berkenaan dalam tempoh TIGA (3) BULAN dari tarikh Perintah Pembahagian yang akan dikeluarkan seperti yang dinyatakan dalam klausa 2(i), maka Penjual dan Pembeli boleh dengan persetujuan Bersama, yang mana persetujuan tersebut tidak boleh diingkar tanpa sebab yang munasabah oleh mana-mana pihak, melanjutkan satu tempoh lagi selama SATU (1) BULAN daripada tamatnya tempoh Penjual mendapatkan kebenaran dan/atau kelulusan Pihak Berkuasa Negeri;

(iii) Sekirannya Perintah Pembahagian Harta Pusaka ke atas nama Penjual gagal diperolehi, maka Perjanjian ini akan terbatal dan segala wang deposit yang telah dibayar oleh Pembeli hendaklah dipulangkan semula oleh Penjual kepada Pembeli melainkan Penjual memberi kebenaran untuk melanjutkan tempoh perjanjian ini.

[44] On D2's advice, and significantly against PW2's advice, the plaintiff paid a deposit of 50% for the *tanah kebun* on the signing of the first *tanah kebun* land. The RM50,000 deposit was paid by way of cheque dated 25 September 2014 to PW2's law firm, Tetuan Zurina, Anum & Co. The law firm issued a payment receipt of the same date to the plaintiff for the deposit.

[45] On 4 January 2015, the plaintiff paid the sum of RM1,000 to Tetuan Zurina, Anum & Co for the registration of her private caveat on the *tanah kebun*. The plaintiff's private caveat was registered on 11 February 2015 under the presentation number 281/2015.

[46] On 7 April 2015, the plaintiff paid Tetuan Zurina, Anum & Co the sum of RM50,000 being balance of the purchase price for the *tanah kebun*. PW3 said that he had paid of the balance of the purchase price on D2's advice. However, a couple of months later, PW2 returned the RM50,000 balance of the purchase prince to the plaintiff as the sale and purchase of the *tanah kebun* was yet to be completed. PW2 said that because the restrictions were still in place, her firm had returned the balance of the purchase price to the plaintiff through a cheque dated 17 June 2015 — she said that the plaintiff was to pay

the balance of the purchase price after the state authority consent for the transfer had been obtained.

[47] Copies of the payment cheques together with the bills and the receipts for the deposit, the balance of the purchase price, lodgment of caveat and legal fees from the law firm, Tetuan Zurina, Anum & Co for the lodgment of the caveat on the *tanah* caveat are shown in bundle B1. These payments are confirmed during the trial by PW2.

[48] PW2 testified that she had prepared the first *tanah kebun* SPA between the plaintiff and D1. She says that all the negotiations, transactions and the payments in respect of the sale and purchase of the *tanah kebun* were done by PW3 on the plaintiff's behalf. Puan Zurina says that she spoke to PW3 and D2 in Bahasa Malaysia, and D2 translated what she had said to PW3 into the Chinese language.

[49] PW3 said that D2 had told him that the SPA required the consent of the state authority and that the registration of the *tanah kebun* in the name of the plaintiff would take some time. PW3 said that every time he asked D2, the latter would tell him that the transaction was still awaiting the consent of the state authority. It was only in early 2019 that PW3 was advised by a friend to conduct a search on the *tanah kebun*.

[50] PW3 said that he was shocked when he saw that the land search results of the *tanah kebun* dated 13 February 2019 ('2019 search results') showed that D2 had been registered as the owner of the *tanah kebun* on 20 April 2017 and that caveat which the plaintiff had lodged on the *tanah kebun* in January 2015 was also removed on 20 April 2017, without the plaintiff's knowledge or approval.

[51] PW3 said that he then contacted the law firm Zurina, Anum & Co and was informed that the SPA had not been terminated by anyone and that the firm did not know about the removal of the caveat.

[52] PW2 confirmed that her law firm was not informed by the defendants or their representatives of the removal of the plaintiff's private caveat on the *tanah kebun* and her law firm did not receive any notice of termination of the SPA from either D1 or D2 or their representatives.

[53] PW2 said that after she found out that the first *tanah kebun* SPA had been cancelled and that D2 was now the registered owner of the *tanah kebun*, she telephoned D2 and told him that what he had done is morally wrong and as PW3's friend he should return the sum of RM50,000 paid by the plaintiff as deposit for the *tanah kebun*.

[54] PW2's testimony is corroborated by Mr Karam Singh (DW2), the lawyer acting for D1 and D2. DW2 confirmed that he had applied for the plaintiff's private caveat on the *tanah kebun* to lifted and that he did not inform the plaintiff or PW2 that the caveat had been lifted.

[55] DW2 was the lawyer who had prepared the second SPA. He testified that he was appointed by D2 sometime in April or May 2015 to prepare the second SPA. DW2 said that D2 had come to see him with D1. D2 had informed him that he intended to purchase the *tanah kebun* and *tanah sawah* from D1 and that D1 agreed to sell both lands to D2.

[56] When asked whether he informed Tetuan Zurina, Anum & Co that he was taking over the sales and purchase agreement, DW2 replied that he did not. He said 'saya tidak menulis surat kepada Zurina, Anum. Saya baca perjanjian yang ... Saya tidak menulis surat, saya minta maaf, saya tidak menulis surat'.

[57] DW2 also testified that after he prepared the second SPA, he did not inform Tetuan Zurina, Anum & Co of the cancellation of the first SPA.

[58] During re-examination by D2's counsel, DW2 explained that he did not inform Tetuan Zurina, Anum & Co that he was taking over the sale and purchase of the lands and the cancellation of the first *tanah kebun* SPA because nine months had lapsed from the date of first *tanah kebun* SPA and the second SPA. He said according to D1 and D2, nothing was done by the plaintiff or the plaintiff's solicitor, so DW2 concluded that the first *tanah kebun* SPA had lapsed since the *perintah pembahagian harta* and the state authority's consent was not obtained within the time stipulated in the SPA.

[59] DW2 testified that the payments under the second SPA — the deposit of RM96,000 and the balance of the purchase price of RM384,000 — were not paid by D2 to D1 through his law firm. He said that the payments were made privately between D2 and D1. He said that when he registered the memorandum of transfer (Borang 14A) for the lands, D1 had confirmed to him and D2 that he had received all payments of the purchase price. However, during the course of the trial, D2's own testimony shows this is in fact not true — D2 had not made all the payments for the lands to D1 prior to the transfer and registration of the *tanah kebun* and *tanah sawah* in his name. He continued to make payments for the lands to D1 for approximately one year after the lands were registered in his name.

[60] DW2 said that he was instructed by D1 and D2 to remove the plaintiff's private caveat on the *tanah kebun* and that he had applied for and obtained the order for the removal of the private caveat. He said 'kaveat itu saya yang batalkan. I mean saya yang apply untuk batalkan'.

[61] As discussed above, the *tanah kebun* and *tanah sawah* fall within the definition of 'small estate' under the SEDA 1955 since their aggregate value is below RM2m. The land administrator has exclusive jurisdiction in the distribution of the deceased's small estate since she died intestate. Under the SEDA 1955, for an administrator to sell property forming part of a small estate by private treaty pursuant to a sales and purchase agreement, the administrator must obtain either a distribution order or an order for sale by private treaty from the land administrator.

[62] However, DW2 testified that he did not make obtaining an order for sale as a condition for the sale of the *tanah kebun* and *tanah sawah* under the second SPA. As discussed below, the only condition for the sale and purchase of the lands in the second SPA was the consent of the state authority.

[63] Accordingly, the *tanah kebun* and the *tanah sawah* were not sold in accordance with the statutory requirements stipulated in the SEDA 1955.

THE SECOND DEFENDANT'S CASE

[64] D2's case is that he is not privy to the first *tanah kebun* SPA, which was between the plaintiff and D1. He says that the plaintiff should seek redress from D1 and not him. Learned counsel for D2 submits that D1 had been in breach of the first *tanah kebun* SPA and the remedy available to the plaintiff is a refund of the deposit paid plus interest.

[65] D2 maintains that he has done nothing wrong in purchasing the *tanah kebun* from D1 under the second SPA since the first SPA had lapsed at the time he purchased the land from D1.

[66] During the trial, D2 testified that he does not know the plaintiff and PW3 and said that PW2 was lying when she said that he had come with the plaintiff and PW3 to her law firm on the day the plaintiff signed the first *tanah kebun* SPA. He also claimed that the plaintiff and PW3 were lying too.

[67] However, D2 did admit that he was in PW2's law firm on the same day as the plaintiff and PW3. Also, as shown in the excerpt of his testimony reproduced in para 100 below, D2 admitted that he knew that the plaintiff had entered into the first *tanah kebun* SPA with D1 for the purchase of the *tanah kebun*.

ANALYSIS

[68] It is undisputed that the plaintiff had entered into the *tanah kebun* SPA with D1 on 26 September 2015 for purchase of the *tanah kebun* for the sum of

RM100,000 and that less than nine months later, D2 entered into the second SPA with D1 to purchase the same *tanah kebun* (the subject matter of the first *tanah kebun* SPA between the plaintiff and D1), and the *tanah sawah* (the subject matter of the first *tanah sawah* SPA between D2 and D1), for the sum of RM480,000.

[69] The testimonies of the plaintiff, PW3 and PW2 are all consistent in the fact that D2 had informed PW3 that the *tanah kebun* was available for sale; that the negotiations and agreement as regards the sale and purchase of the *tanah sawah* were conducted by PW3 and D2; both the plaintiff and PW3 never met and never dealt with D1; D2 had brought the plaintiff and PW3 to PW2's law firm for the signing of the first *tanah sawah* SPA; D2 had informed PW3 that the purchase price of the *tanah kebun* was RM100,000 and that he is to pay a deposit in the sum of RM50,000 — which was against the advice of PW2, who testified that she had informed PW3 that the normal deposit payable on the signing of a sales and purchase agreement is 10% and not 50% of the purchase price.

[70] D2 was a less than truthful witness — I found him to be very evasive and defensive in his demeanor. He had lost his temper a few times during cross-examination by the plaintiff's counsel. As reflected in the notes of proceedings, I had to ask him to keep his anger in check and to just answer the questions posed by the learned counsel for the plaintiff.

[71] On the other hand, I found PW2 to be a truthful and honest witness. She was an independent and disinterested witness, who has nothing to lose or gain from the outcome of this trial.

[72] PW2 was adamant that D2 had attended her office on 26 September 2014 together with the plaintiff and PW3. She disagreed with the many questions put to her by D2's counsel during cross-examination suggesting that D2 was not present with the plaintiff and PW3. She also disagreed with learned counsel for D2's suggestion that even if he was at PW2's law firm on that day, it was for another matter.

[73] D2's counsel had put it to PW2 during cross-examination that on the day that the plaintiff came together with PW3 to sign the SPA, D2 did not come with them and that if D2 was at her office on that day, it was for another matter. PW2 disagreed with both suggestions. Below is the excerpt of the PW2's testimony:

Peguam D2:	So mungkin pada hari tersebut kalau ... Okay saya nak cadangkan, nombor satu Puan pada hari tersebut Chia Tsai Looi dan suami dia datang ke pejabat Puan, mereka dua sahaja yang datang. Encik Heng Wah Kai tidak berada di sana.
PW2:	Encik Heng Wai Kai ada datang.
Peguam D2:	Ada?
PW2:	Ada.
Peguam D2:	Saya cadangkan dia tidak ada? Setuju atau tidak?
PW2:	Tidak setuju
Peguam D2:	Sekarang saya cadangkan, kalau dia berada di sana, kalau itu hari dia pun berada di sana dia kemungkinan berada di sana untuk urusan yang lain?
PW2:	Saya rasa tidak Encik.
Peguam D2:	Puan rasa tidak?
PW2:	Ya. Tidak untuk urusan yang lain.

[74] PW2 said that at the same time the plaintiff was signing the first *tanah kebun* SPA, D2 was also signing the first *tanah sawah* SPA. The payments for the *tanah sawah* were given to D1.

[75] PW2 said that she has known D2 for more than ten years and that he is a land broker who has brought a number of sales and purchase transactions to her law firm — sometimes as the purchaser, sometimes as the vendor and sometimes by introducing his friends. PW2 testified that:

Peguam D2:	Okay. So Puan kenal Heng Wah Kai untuk 10 tahun dan dia ada banyak urusan lah, jual beli selalu dia?
PW2:	Kadang-kadang dia berurusan sebagai introducer. Maksudnya dia kenalkan kawan dia untuk mendapatkan khidmat saya. Dan ada juga yang berurusan dengan saya secara kediri.
Peguam D2:	Sebab pembeli dia sendiri lah?
PW2:	Ya.
Peguam D2:	Pembeli atau Penjual ...
PW2:	Pembeli atau Penjual dan berurusan sebagai mengenalkan kawan dia.

[76] PW2 said that D2 had brought and introduced PW3 to her for the purchase of the *tanah kebun* and for the preparation of the first *tanah kebun* SPA. PW2 said that all the discussions in relation to the sale and purchase of the *tanah kebun* was between her, PW3 and D2. As PW3 is not fluent in Bahasa

Malaysia, D2 would bring PW3 to her office and explain the discussions to PW3 in the Chinese language.

[77] PW2 agreed that RM50,000 was more than the normal amount of deposit paid in a sales and purchase of land, which was 10%. She said that although she had advised the plaintiff and PW3 against paying 50% of the purchase price as a deposit, the plaintiff and PW3 insisted on paying RM50,000. Hence, why she had inserted a clause in the recital to the SPA that if the *perintah pembahagian* was not obtained, D1 is to return all the deposit paid to him by the plaintiff. Below is the excerpt of PW2's testimony:

Peguam D2:	Deposit yang dibayar itu bukan 10%?
PW2:	Betul. Itu atas permintaan kedua-dua pihak melalui satu perbincangan walaupun saya sudah nasihatkan benda ini tidak sepatutnya berlaku, mereka yang minta.
Peguam D2:	Okay. So Puan telah nasihatkan ...
PW2:	Kedua-dua pihak.
Peguam D2:	... yang amalan biasa 10%.
PW2:	Ya.
Peguam D2:	Tak payah bayar 50% kan?
PW2:	Betul.
Peguam D2:	Okay. Tapi Penjual itu ... Pembeli tidak ikut nasihat Puan?
PW2:	Betul, tak ikut nasihat saya.
Peguam D2:	So Pembeli sendiri mengambil risiko yang tinggi lah?
PW2:	Ya dan sebagai menjaga kepentingan Pembeli saya ada letak 'Klausa (B)' dalam Mukadimah:- mengatakan bahawa, 'Sekiranya Perintah Pembahagian gagal diperolehi oleh pihak Penjual, maka Penjual harus memulangkan segala deposit yang telah dibayar kepada pihak Penjual'.

[78] PW2 was asked whether she had advised PW3 about the restrictions and the caveat on the *tanah kebun*. PW2 said that she had advised PW3 of the restrictions to the said land — in that D1 must get a *perintah pembahagian harta pusaka* for D1 (as he was only the administrator of the land) to sell the *tanah kebun* and the consent of the state authority. She also told PW3 that the private caveat entered by Ramesh a/l Ekambaran must be removed before the *tanah kebun* can be transferred to the plaintiff. She said that her advice to PW3 was done through D2, who translated her advice to PW3 into the Chinese language.

[79] PW2 said that D2 had told her that it would not be a problem because D1 lives in the same *kampung* in Sekinchan and that D2 can sort out the restrictions. She said because of the high risk in the *tanah kebun*, she had included recital (B) in the SPA where D1 is to return the deposit to the plaintiff

in the event the *perintah pembahagian harta pusaka* is not obtained. A

[80] PW2 testified that PW3 told her that D2 is his friend — they are from the same *kampung* in Sekinchan — and that he believes D2's words. PW2 said that D2 had brought the plaintiff and PW3 to her office for the plaintiff to sign the SPA. During re-examination by plaintiff's counsel, PW2 testified that PW3 would seek advice from D2 — his good friend — for all his decisions in respect of the purchase of the *tanah kebun*. PW2 said: B

PW2:	Selain Pembeli juga memang, segala keputusannya juga akan meminta nasihat daripada kawan baiknya iaitu Defendan Kedua. Sebab Defendan Kedua memang arif tentang penjualan dan pembelian tanah.

C

[81] Learned counsel for D2 questions how the plaintiff and PW3 are not able to understand Bahasa Malaysia when they are Malaysians living in Malaysia. The plaintiff and PW3 are self-made and do not possess any educational qualifications. They live in Sekinchan, which is one of Chinese new villages created by the British colonial government. With the population of these new villages almost exclusively Chinese, it is not implausible that its uneducated inhabitants like the plaintiff and PW3 are only able to speak in Chinese. During the trial, both the plaintiff and PW3 required the assistance of a Chinese language interpreter in order to give their testimony. D E

[82] It was obvious to me, from PW3's demeanor in the witness box that he held D2's advice in high regard because to him, D2 was educated and had a lot of experience in land matters. Although D2 only has an SPM (Sijil Pelajaran Malaysia) certificate ie, his education was only up to secondary school level, to the plaintiff and PW3, D2's SPM qualification meant that he was an educated man. F G

[83] When asked when D1 came to her office to sign the SPA, PW2 said that she really could not remember when he came to sign the SPA. She said that D2 had brought D1 again to take deposit cheque for RM50,000 that was paid by the plaintiff pursuant to the SPA. H

[84] PW2 said that the initial plan was for D1 to get a *perintah pembahagian harta pusaka* and that she had met with D1's siblings and they all agreed for the land to be sold. However, D1 was unable to get the *perintah pembahagian harta pusaka* because of problems with his cousins. I

[85] PW2 said that she had entered the caveat on the *tanah kebun* on 11 February 2015 under Perserahan No 281/2015. However, she did not make

the application to the state authority for consent for the transfer the *tanah kebun* from D1 to the plaintiff.

[86] PW2 said that at the time of the execution of the first *tanah kebun* SPA, she had informed the plaintiff's husband, PW3 and D2 to obtain the services of a litigation lawyer to apply for the state authority's consent. PW2 said that D2 told her that he will meet a lawyer from the law firm Karam Singh for the removal of the restrictions. Karam Singh is DW2. He is the lawyer who had subsequently lifted the plaintiff's private caveat on the *tanah kebun* without her knowledge, and he was also the one who had prepared the second SPA for the sale of the *tanah kebun* and the *tanah sawah* from D1 and D2, and who had registered D2's name as the registered owner of the *tanah kebun* and *tanah sawah* pursuant to a memorandum of transfer dated 22 April 2016.

[87] From the documents, the timeline in respect of the transactions on the *tanah kebun* are as follows:

DATE	EVENT
30 December 2011	Ramesh a/l Ekambaran's private caveat is lodged on the tanah kebun under No Pers 2139/2011
5 January 2012	Wai Foo Sang's private caveat is lodged on the tanah kebun under No Pers 19/2012
26 September 2014	Plaintiff enters into first tanah kebun SPA with D1
3 October 2014	Wai Foo Sang's private caveat under No Pers 19/2012 on the tanah kebun is cancelled
11 February 2015	Plaintiff's private caveat is lodged on the tanah kebun under No Pers 281/2015
12 June 2015	D2 entered into the second SPA to purchase the tanah kebun and tanah sawah from D1
22 April 2016	Memorandum of transfer (Borang 14A) for the transfer of the tanah kebun and tanah sawah between the transferor, D1 (as administrator) and the transferee, D2.
20 April 2017	Plaintiff's private caveat under No Pers 281/2015 on the tanah kebun is cancelled
	Ramesh a/l Ekambaran's private caveat No 2139/2011 on the tanah kebun is cancelled
	The transfer of the title to tanah kebun from Ramesh a/l Ekambaran to D2 is registered.

[88] The 2019 search results on the *tanah kebun* show the following endorsements on the issue document of title for the *tanah kebun*:

No Pers 1110/2014 Turun milik akibat kematian (Borang F)	
bahagian	PANDIAN A/L MUNUSAMY, No. Kad Pengenalan: 630607-10-6451 sbg Pentadbir, 1/1 bhgn
diturunmilik kepada	RAMESH A/L EKAMBARAN, k.p. 721104-10-6003, sbg, Pentadbir, 1/1 bahagian NO 24 JALAN PJC 2C/11J KAMAPONG MEDAN PETALING JAYA 46000 SELANGOR
mengikut Perintah dalam fail JKPTG/PK/10/04/0405/2010 (23)	

No Pers 1610/2014 Turun milik akibat kematian (Borang F)	
bahagian	RAMESH A/L EKAMBARAN, No. Kad Pengenalan:721104-10-6003 sbg Pentadbir, 1/1 bhgn
diturunmilik kepada	PANDIAN A/L MUNUSAMY, k.p. 630607-10-6451, sbg, Pentadbir, 1/1 bahagian NO 5 TAMAN PUCHONG PERDANA 2/1 SUBANG JAYA PUCHONG 47100 SELANGOR
mengikut Perintah dalam fail JKPTG/PK/10/04/0405/2010 (34)	

No Pers 1206/2015 Turun milik akibat kematian (Borang F)	
bahagian	PANDIAN A/L MUNUSAMY, No. Kad Pengenalan: 630607-10-6451 sbg Pentadbir, 1/1 bhgn
diturunmilik kepada	PANDIAN A/L MUNUSAMY, k.p. 630607-10-6451, sbg, Pentadbir, 1/1 bahagian NO 5 TAMAN PUCHONG PERDANA 2/1 SUBANG JAYA PUCHONG 47100 SELANGOR DAN RAMESH A/L EKAMBARAN, k.p. 721104-10-6003, sbg, Pentadbir 2, 1/1 bahagian NO 24 JALAN PJC 2C/11J KAMAPONG MEDAN PETALING JAYA 46000 SELANGOR
mengikut Perintah dalam fail JKPTG/PK/10/04/0405/2010	

Nombor Perserahan: 790/2017 Pindahmilik Tanah	
bahagian	RAMESH A/L EKAMBARAN, No. Kad Pengenalan:721104-10-6003 sbg Pentadbir, 1/1 bhgn
kepada	HENG WAH KAI, No. k.p. 561007-08-5079, 1/1 bahagian NO 5 LORONG 1 BAGAN SEKINCHAN SEKINCHAN 45400 Selangor
Didaftarkan pada 20 April 2017 jam 11:52:01 pagi Surat kebenaran: 1198/2017	

[89] The issue document of title of the *tanah kebun* dated 30 May 2012 shows that D1 was the registered owner of the land as administrator, and that there were two private caveats lodged on the *tanah kebun*, namely: (i) Ramesh a/l Ekambaran's private caveat under No Pers 2139/2011; and (ii) Wai Foo Sang's private caveat under No Pers 19/2012

[90] The endorsements on the issue document of title show that on 22 April 2016 — the date of the memorandum of transfer between D1 and D2 — D1 and Ramesh a/l Ekambaran were the joint administrators of the *tanah kebun*. D1 was not the sole administrator of the *tanah kebun*. Accordingly, D1 did not have the right to transfer the *tanah kebun* to D2.

[91] Furthermore, the endorsement 'Nombor Perserahan 790/2017 Pindahmilik Tanah' shows that the *tanah kebun* was transferred from Ramesh a/l Ekambaran, and not D1, to D2 and that the transfer of title was registered on 20 April 2017 at 11.52am.

[92] Learned counsel for D2 submits that based on the Federal Court's decision in *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465; [1998] 1 CLJ 793, D1's mere knowledge of an unregistered claim or interest does not amount to fraud within the meaning of s 340(2)(a) of the NLC.

[93] On the meaning of 'fraud' under s 340(2)(a) of the NLC, the Federal Court in *Pekan Nenas Industries* held:

> We now turn to consider some of the cases where the meaning of 'fraud' under s 340(2)(a) of theNLC was discussed, with the admonition that whether fraud is proved will depend on the particular circumstances of each case.
>
> The Privy Council case of *Assets Co v Mere Roihi* [1905] 1 AC 176 (per Lord Lindley), is generally accepted in all Torrens jurisdictions as correctly laying down the definition of fraud; namely, that *the word means 'actual fraud or dishonesty of some sort, not what is called constructive or equitable fraud'.*
>
> And, the following passage in the judgment of Lord Lindley in *Assets Co Ltd v Mere Roihi,* at p 210, *requires courts to make an assessment of the conduct of the registered Purchaser in each case to see whether it amounts to fraud in the sense of dishonesty:* ... (Emphasis added.)

[94] With respect to learned counsel for D2, the facts of this instant case are very different from that in *Pekan Nenas Industries*. In *Pekan Nenas Industries*, Dato Tan, who was the alter ego of the intervener/purchaser, Pekan Nenas Industries Sdn Bhd, upon knowing about the first caveat on the disputed lands sought the advice of his solicitor and made enquiries with the sixth respondent (referred to in the Federal Court's judgment as 'the mother' and who was the company secretary of the family company), who assured Dato Tan that she had

custody of the title deeds and the family company's resolution authorising the sale of the disputed lands. He also knew about the second caveat when he paid the balance of the purchase price but made the payment on advice of his solicitor that such payment was necessary to avert forfeiture of the deposit paid under the sales and purchase agreement.

[95] Whereas in this instant case, D2 did not have mere knowledge of the plaintiff's caveat on the *tanah kebun*. PW3 had purchased the *tanah kebun* for the plaintiff's on D2's advice. PW3 had also agreed to pay a deposit of 50% of the purchase price on D2's advice. Although D2 knew that the plaintiff had an unregistered interest and claim on the *tanah kebun* by virtue of the first *tanah kebun* SPA and the deposit that she had paid towards the purchase, he chose to take advantage of his knowledge of the terms and conditions of the first *tanah kebun* SPA and the fact that D1 did not obtain the *perintah pembahagian* and the consent of the state authority within the time stipulated in the first *tanah kebun* SPA, to enter into the second SPA to purchase the *tanah kebun* for himself.

[96] Learned counsel for D2 questions how can deliberate dishonesty be imputed on D2 since as he had stated in his evidence in chief that he was prompted to enter into the second SPA by the fact that nothing was done in the earlier sale of the *tanah kebun* and the first *tanah kebun* SPA had expired, and he had reiterated in cross-examination that as far he was concerned the first *tanah kebun* SPA had expired when he entered into second SPA.

[97] The evidence shows that D2 even though he took the position that the first *tanah kebun* SPA had expired, kept telling PW3 until the 2019 search results that that the first *tanah kebun* SPA was still pending the consent of the state authority. This is even though D2 had entered into the second SPA with D1 and had registered the *tanah kebun* in his name in own name in April 2017. To any reasonable person — the man on the clapham omnibus — D2's conduct in telling such untruths to PW3 is the opposite of honest. It is deliberate dishonesty on his part.

Is D2 a bona fide purchaser for value?

[98] D2 claims to be a bona fide purchaser for value and that his title to the *tanah kebun* is, accordingly, indefeasible under s 340(2) of the NLC.

[99] It is settled law that when a person invokes the doctrine of bona fide purchaser for value, the burden of proof is on the person who invoked the doctrine that he is indeed a bona fide purchaser for value who had lacked notice and who had paid valuable consideration for the land purchased. In *Pekan Nenas Industries*, Edgar Joseph Junior FCJ delivering the judgment of the

Federal Court held that:

> So far as the burden of proof is concerned, *when the doctrine of the bona fide Purchaser for value without notice is invoked, we are inclined to the view that the burden of showing lack of notice is on the person invoking the doctrine.* (See, *Ninety — Five Pty Ltd v Banque Nationale de Paris* [1988] WAR 132; cf *Re Dover Pty Ltd* [1981] 6 ACLR 307, 310).
>
> Whether or not the outsider was put on notice is a question of fact on which other cases are of no assistance.
>
> When, as in this case, it is alleged that the circumstances raised a doubt regarding a possible abuse of power, the purpose of inquiry is not to ascertain that the transaction is in fact regular but merely to negative or neutralise the circumstances of suspicion. The outsider is entitled to enforce the contract provided that he acts in good faith and without notice that the authority is being abused. It follows that reasonable explanations given by the agent in answer to inquiries would in such a case suffice (*AL Underwood Ltd v Bank of Liverpool* [1924] 1 KB 775).

[100] This court finds that D2 has failed to prove on a balance of probabilities that he lacked notice of the plaintiff's beneficial interest in the *tanah kebun*. He knew that the plaintiff had purchased the *tanah kebun* pursuant to the first *tanah kebun* SPA. This evident from his answers during cross-examination:

Peguam Plaintif:	Saya cadangkan Encik Heng mengetahui akan perjanjian Jual Beli untuk tanah kebun dengan Chia Tsai Looi dan Chia Tsai Looi telah membayar bayaran 50,000?
DW1:	Saya sudah beli kebun. Sebab dia beli sama saya satu Penjual dalam satu massa yang sama. Memang saya tahu dia beli.
Peguam Plaintif:	Okay, so memang Encik Heng tahu akan Chin Tsai Looi telah membeli tanah kebun ya?
DW1:	Ya.

...

Peguam Plaintif:	Ada Encik Heng memberitahu Encik Karam akan satu perjanjian bertulis yang telah dibuat oleh Pandian bersama Chia Tsai Looi?
DW1:	Ada, ada
Peguam Plaintif:	You ada beritahu?
DW1:	Ada
Peguam Plaintif:	Dan ... Encik Heng, Encik Heng tahu ada dua perjanjian ini di pejabat Paun Zurina. Ada dekat Puan Zurina kan?
DW1:	Ya.

[101] Additionally, PW2 had testified that at the time the plaintiff signed the first tanah kebun SPA, she had informed the plaintiff's husband, PW3 and D2

to obtain the services of a litigation lawyer to apply for the state authority's consent. PW2 said that D2 told her that he will meet a lawyer from the law firm Karam Singh for the removal of the restrictions.

[102] However, as the facts show, instead of meeting Karam Singh (DW2) for the removal of the restrictions in order that the plaintiff may complete her purchase of the *tanah kebun* under the first *tanah kebun* SPA, D2 instructed Karam Singh to remove the plaintiff's caveat on the *tanah kebun* together with the other restrictions on the said land, so as to enable him to purchase the *tanah kebun* for himself under the second SPA that he had entered with D1.

[103] Furthermore, this court finds that D2 had failed to proof that he had paid valuable consideration for the *tanah kebun* and the *tanah sawah* under the second SPA prior to the registration of the lands in his name.

[104] The purchase price for the *tanah kebun* and the *tanah sawah* under the second SPA was RM480,000 and the deposit payable on the signing of the agreement was RM96,000. DW2 said that D2 did not pay the deposit or any of the purchase price through his firm. He said that he took it that D2 had paid the purchase price to D1 because D1 did not complain to him that D2 had not paid him the purchase price when he signed the memorandum of transfer for the transfer of the *tanah kebun* and *tanah sawah* to D2 under the second SPA. Below is the excerpt of DW2's testimony as regards the payment of the deposit and purchase price:

Peguam Plaintif:	Saya akan tunjuk, saya akan tumpukan perhatian keapda 'Klausa F', 'Schedule F' berkenaan deposit pembelian. Betul?
DW2:	Ya.
Peguam Plaintif:	Okay, adakah wang ini telah dibayar melalui firma Encik Karam?
DW2:	Tidak
Peguam Plaintif:	Wang yang diterima dan wang yang diberi ini hanya dinyatakan oleh Defendan-Defendan? Apa yang dinyatakan Encik Karam telah menyatakan di sini?
DW2:	Ya. Antara Penjual dan Pembeli
Peguam Plaintif:	Dari cara bayaran cash atau cek, Encik Karam tidak tahu?
DW2:	Saya tidak tahu.
Peguam Plaintif:	Okay, Encik Karam sekarang kita kepada 'Klausa G', 'Schedule G' ya. Bayaran RM384,000 yang baki bayran tersebut okay. Adalah baki bayaran ini telah dibayar melalui firma Encik Karam?
DW2:	Tidak

Peguam Plaintif:	Jadi, apa-apa bayaran adalah hanya persediaan antara Defendan-defendan, Betul?
DW2:	Ya

[105] D2 testified that D1 had taken money from him either for 'belanja' or 'pinjaman'.

[106] The letter of acknowledgement signed by D2 dated 2 May 2017 (in bundle B2/p 104), shows that D2 had received the original issue document of title for the tanah kebun from DW2 on 2 May 2017.

[107] However, the fund transfer slips from D2 to D1 and payment vouchers were made *after* the title in the *tanah kebun* was registered in D2's name (ie, on 20 April 2017) and *after* D2 received the original issue document of title to the *tanah kebun* (ie, on 2 May 2017). The fund transfer slips and the payment vouchers (in bundle B2/p 106–119) were from 5 May 2017 to 21 March 2018; and they do not add up to the balance of the purchase price of RM384,000 under the second SPA.

[108] When asked by plaintiff's counsel why he made the payments to D1 after he had received the issue document of title, D2 answered because he had not finished paying the purchase price of RM480,000 for the lands purchased under the second SPA. This can be seen from the excerpt of his testimony below:

Peguam Plaintif:	Okay tengok muka surat 106 hingga 119. Semua bayarannya kamu terima selepas title kepada Pandian?
DW2:	Ya
Peguam Plaintif:	Kamu masih bayar dia?
DW2:	Ya, sebab belum habis bayaran. Saya kena bayar cukup RM480,000.
Peguam Plaintif:	Tapi Encik Heng, Encik Heng ada beri keterangan ada setengah bayaran itu Encik Heng Tak tahu mungkin untuk belanja atau pinjaman kepada Pandian. Betul tak?
DW2:	Saya tidak tahu ambil wang untuk apa. Saya Cuma kasi dia sign Voucher bila dia ambil duit. Saya tahu cuma bayar jumlah 480,000 sahaja. Selepas ambil title pun kena bayar sampai habis.

[109] What is clear from D2's own testimony, he was not a purchaser for value at the time the title in the tanah kebun was transferred to him on 20 April 2017 and registered in his name.

[110] By his own admission, he had not paid the full purchase price for the

lands at the time title to the tanah kebun and *tanah sawah* were registered in his name. The evidence shows that D2 continued to make payments to D1, which he says were towards the purchase price for the lands under the second SPA, until 21 March 2018 — nearly one year after the titles in the lands were registered in his name.

[111] Furthermore, there is no proof that D2 had paid D1 the RM96,000 deposit on the signing of the second SPA. During re-examination by his counsel, D2 said that the deposit of RM96,000 was received by D1 before signing the second SPA — 'Dia sudah terima sebelum sign S&P'. However, there is no document produced during the trial to show that D1 had indeed received the payment of the deposit under the second SPA as claimed by D2.

[112] The payment slips in bundle B2 show that D2 had been transferring funds to D1 after the titles in the lands were registered in his name. There is no documentary proof that part of the purchase price that D2 said that he had paid to D1 for the lands was made prior to the transfer of ownership. All we have is D2's unsubstantiated and uncorroborated oral testimony. What is clear to this court from D2's oral testimony is that he had taken into account all the monies which he says he had loaned or advanced to D1 prior to entering into the second SPA and had set off these advances/loans against the purchase price. Similar to the purported payment of the deposit, there were no documents before this court to show that the amounts purportedly paid, loaned or advanced by D2 to D1 prior to execution of the second SPA and the transfer of the *tanah kebun* and *tanah sawah* to him.

[113] For these reasons, I find that D2 has failed to discharge his burden of proof that he is indeed a bona fide purchaser for value of the *tanah kebun* and the *tanah sawah*.

Were the tanah kebun and tanah sawah validly transferred by D1 to D2?

[114] In deciding the validity of the sale and transfer of the *tanah kebun* and *tanah sawah* by D1 to D2 under the second SPA, the questions before this court are: (i) who was the administrator of the estate pursuant to the Borang F (grant of letter of administration under s 13 of the SEDA 1955) at the time of the sale and transfer of the both lands from D1 to D2; and (ii) was the sale and transfer made pursuant to a distribution order or an order for sale by private treaty from the land administrator.

Who was the administrator of the tanah kebun at the date of the second spa and the memorandum of transfer?

[115] The search on the *catatan carian persendirian* on the *tanah kebun* dated 13 February 2019, was conducted pursuant to s 384 of the NLC. It is stated on the 2019 search results:

> CATATAN CARIAN PERSENDIRIAN
>
> Adalah diperakui bahawa suatu carian persendirian telah dibuat mengikut Seksyen 384 Kanun Tanah Negara berkenaan tanah berikut:

[116] Section 384 of the NLC reads as follows:

> 384 Private Searches
>
> Any person or body may, at any time during normal office hours of any Registry or Land Office, but subject to payment of the prescribed fee and such other conditions (if any) as may be prescribed, inspect and take notes of or extracts from —
>
> (a) any register of title, Presentation Book or Correction Notebook maintained by the Registrar or any predecessor in office; and
>
> (b) any instrument of dealing or application presented or made to, or in the custody of, the Registrar.

[117] The 2019 search results falls within the definition of 'public documents' under s 74 of the Evidence Act 1950, as it is a 'document forming the acts or records of the acts or records of the acts of: (i) the sovereign authority; (ii) official bodies and tribunals; and (iii) public officers, legislative, judicial and executive whether Federal of State or of any other part of the Commonwealth or of a foreign country', and it is a document which any person has a right to inspect under s 384 of the NLC.

[118] Pursuant to s 383(2) of the NLC, this court receives the copy of the 2019 search results as prima facie evidence of all matters contained or endorsed thereon.

[119] The endorsements on the search results show that at the time D2 entered into the second SPA with D1, the joint administrators of the estate were D1 and Ramesh a/l Ekambaram pursuant to a Borang F registered under No Pers 1206/2015.

[120] Karam Singh (DW2), the lawyer who prepared the second SPA and the memorandum of transfer, insisted during cross-examination that D1 is the administrator of the land and not Ramesh. He said pursuant to No Per 1610/2014 endorsed on the title to the *tanah kebun*, the administrator

of the land was D1. He says that Ramesh had only lodged a private caveat on the land.

[121] With respect, I have to disagree with DW2, the 2019 search results of the *tanah kebun* show that under a subsequent Borang F filed under No Pers 1206/2015 both D1 and Ramesh a/l Ekambaran were the joint administrators of the land. This fact is corroborated by the earlier search results of the *tanah kebun* dated 3 June 2016, which states under 'pemilikan dan alamat' are 'Pandian a/l Munusamy dan Ramesh a/l Ekambaran'.

[122] Pursuant to s 383(2) of the NLC, this court must accept what is endorsed on the land search results as prima facie evidence as to who were the owners of the land as administrators during the transfer sale and transfer of the land.

[123] Neither D2 nor his lawyer, DW2, provided any evidence to disprove the prima facie evidence. DW2's oral testimony in the witness box based on his misreading (accidental or otherwise) of the endorsements on the land search results does not in any way rebut the prima evidence that both D1 and Ramesh were owners of the *tanah kebun* as joint administrators of the deceased's estate.

Was the sale of the tanah kebun made pursuant to a land administrator's distribution order or an order for sale by private treaty?

[124] Under s 15(1) of the SEDA 1955 and reg 16A of the SEDA Regulations, the joint administrators must obtain either a distribution order or an order for sale by private treaty from the land administrator before selling and transferring the land to D2 pursuant to the second SPA.

[125] However, in the second SPA, there was only one condition stipulated for the transfer of the *tanah kebun* and *tanah sawah* to D2, namely the consent of the state authority. Under 'Special Conditions' (in bundle B2/p 42) the condition is stated as follows:

> 2 The said property is subject to a restriction in interest that the land shall not be transferable, leased or charged without prior written consent from the State Authority.

[126] The distribution order or an order for sale by private treaty, though statutorily required under the SEDA 1955 and the SEDA Regulations in order for a small estate to be sold by its administrator, were not made conditions in the second SPA. As can be seen from the excerpt of his testimony below, DW2 confirmed that he had only inserted one condition for the sale of the lands in the second SPA ie, the state authority's consent. He confirmed that he did not

include the order for sale as a condition for the transfer under the second SPA:

Peguam Plaintif:	Dalam perjanjian ini terkandung terma-terma untuk syarat-syarat kan?
DW2:	Ya.
Peguam Plaintif:	Sekarang muka surat 42 dan 43. Encik Karam ada nyatakan tentang Perintah Jual?
DW2:	Tidak
Peguam Plaintif:	Saya sahkan bahawa condition untuk consent dari State Authority?
DW2:	Ya, betul

[127] DW2's testimony explains why the memorandum of transfer for the land did not state that the transfer of the *tanah kebun* and *tanah sawah* from D1 to D2 was subject to the land administrator's order for sale by way of private treaty. It also explains why the search results of the *tanah kebun* did not state that the sale was made pursuant to a distribution order or land administrator's order for sale by private treaty.

[128] A land administrator's distribution order or an order for sale by auction or by private treaty is statutorily required under the SEDA 1955 in order for the administrator of a small estate to sell any of the estate's property. Therefore, since the administrator of the deceased's estate, be it D1 or Ramesh or D1 and Ramesh as joint administrators, failed to obtain a distribution order or order for sale by private treaty from the land administrator prior to the sale and transfer of the *tanah kebun* to D2 pursuant to the second SPA, the sale and transfer of the *tanah kebun* and *tanah sawah* from D1 to D2 is invalid and void ab initio.

FINDINGS OF THIS COURT

[129] The findings of this court are confined to the sale and purchase of the *tanah sawah*, which is the subject matter of the plaintiff's claim against D1 and D2.

[130] For the reasons discussed above, this court finds that D1 was not the administrator of the deceased's estate when he entered into the second SPA with D2 to sell the land to D2 and when the memorandum of transfer was executed by D1 as transferor and D2 as transferee of the said *tanah kebun*.

[131] At the time D1 and D2 entered into the second SPA, and the memorandum of transfer, the joint administrators of the estate were D1 and Ramesh a/l Ekambaran. They were jointly named on the issue document of title of the *tanah kebun* as administrators of the said land.

[132] Pursuant to the SEDA 1955 and the SEDA Regulations the administrator of a small estate can only sell land which belongs to the small estate either through a land administrator's distribution order or an order for sale by auction or by private treaty. As discussed above, neither a distribution order nor an order for sale was obtained from the land administrator prior to the sale and transfer of the *tanah kebun* to D2.

[133] As the sale of the *tanah kebun* by D1 to D2 was not made pursuant to a distribution order or an order for sale by private treaty by the land administrator, D1's sale of the *tanah kebun* to D2 is, accordingly, invalid and his transfer of the said *tanah kebun* to D2 is void ab initio.

[134] For the reasons discussed above, this court also finds that D2 is not a bona fide purchaser for value of the *tanah kebun*.

[135] Even if D2 was a bona fide purchaser for value, this court finds that D2's title to the *tanah kebun* is not indefeasible. The evidence shows that D2 was party or privy to a misrepresentation to the plaintiff and PW3 — D2 kept informing PW3 every time he was asked by PW3 that the plaintiff's purchase of the *tanah kebun* under the first *tanah kebun* SPA was pending the state authority's consent (even after the *tanah kebun* had been transferred to him) when he knows that it is not true.

[136] The facts show that at the same time D2 was telling PW3 that the plaintiff's purchase was pending consent from the state authority, D2 together with D1 and their lawyer DW2 had taken the position that the first *tanah kebun* SPA had lapsed because of non-fulfilment of the conditions, namely obtaining the *perintah pembahagian* and the state authority's consent, and had proceeded to negotiate and enter into the second SPA with D1 to purchase the *tanah kebun* himself together with the *tanah sawah*.

[137] Although D2 and his lawyer DW2 had taken the position that the first *tanah kebun* SPA had lapsed, neither D2 nor DW2 informed the plaintiff, PW3 or PW2. Instead, D2 strung the plaintiff and PW3 along and continued with the misrepresentation that the first *tanah kebun* SPA was pending the state authority's consent until PW3 discovered the truth pursuant to results of the search he had conducted on the *tanah kebun* in 2019.

[138] Therefore, even if D1's sale and transfer of the *tanah kebun* to D2 pursuant to second SPA was valid (which, for the reasons above, this court finds that it is not), this court finds that D2's title or his purported interest in the *tanah kebun* shall not be indefeasible because:

(a) D2 was not a bona fide purchaser for value of the *tanah kebun*;

A (b) D2 was party or privy to the misrepresentation on the plaintiff; and

(c) D2's registration of his title and interest to the *tanah kebun* was by means of an insufficient or void instrument. The instrument was insufficient and/or void because, at the material time, D1 was not the sole administrator of the land — he was joint administrator with Ramesh a/l Ekambaran. Additionally, the sale and transfer of the land to D2 was not made pursuant to distribution order or order for sale by way of private treaty as is statutorily required under SEDA 1955 and the SEDA Regulations.

C DECISION

[139] For the reasons above, this court finds that D2's title and interest in the *tanah kebun* is not indefeasible.

D

[140] It is hereby declared that the registration of D2 as the registered owner of the *tanah kebun* be set aside.

[141] D2 is to pay the plaintiff costs in the sum of RM30,000.

E

Order accordingly

Reported by Nabilah Syahida Abdullah Salleh

F

G

H

I